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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORACLE AMERICA, INC., a Colorado corporation; ORACLE USA, INC., a Delaware Corporation, and ORACLE INTERNATIONAL CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation; and SETH RAVIN, an individual,

Defendants.

Case No. 2:10-cv-0106-LRH-PAL

PLAINTIFFS ORACLE AMERICA INC., ORACLE USA, INC. AND ORACLE INTERNATIONAL CORP.'S OPPOSITION TO DEFENDANT RIMINI STREET, INC.'S MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

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PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS FIRST AMENDED COMPLAINT

Plaintiffs Oracle America, Inc. ("Oracle America"), Oracle USA, Inc. ("Oracle USA") and Oracle International Corporation ("OIC") (together "Oracle" or "Plaintiffs") file this memorandum of law in support of their opposition to Rimini Street, Inc.'s ("Rimini's" or "Rimini Street's"), motion to dismiss Oracle's First Amended Complaint.

I. INTRODUCTION

Oracle's First Amended Complaint ("FAC") describes an illegal scheme by defendants Rimini Street and Seth Ravin. Defendants logged on to Oracle's customer support websites using the credentials of Oracle's existing support customers; agreed to Oracle's website Terms of Use; used web "crawlers" and other means to obtain access to copyrighted material that defendants were not authorized to access, copy, or use; stole that intellectual property; and used it to allow Rimini's own competing software support business to substantially undercut Oracle's prices with Oracle's own proprietary information.

On the basis of these allegations, set forth in considerably greater detail in the FAC, Oracle has pled thirteen causes of action. Rimini concedes that Oracle has pled copyright infringement and breach of contract, but moves to dismiss the remaining eleven claims. Rimini is wrong. All of the challenged causes of action are properly and sufficiently pled.

CFAA. Oracle has pled multiple violations of the Computer Fraud and Abuse Act ("CFAA"). Rimini had no permission to access Oracle's website and data except as expressly permitted by Oracle's Terms of Use, which Rimini breached. Contrary to Rimini's assertion, website terms of use can determine when access to a computer is unauthorized, as federal courts repeatedly have held. Moreover, Rimini offers no argument at all to defend its use of crawlers, one of the specific CFAA violations that Oracle has pled.

California and Nevada Computer Access Claims. On Oracle's claims under California Penal Code Section 502 and Nevada Revised Statute Section 205.4765, Rimini merely repeats the meritless arguments it raised against Oracle's CFAA claim, while ignoring the actual language of the California and Nevada statutes. Under state law, in contrast to the CFAA,

unauthorized access to any "data" or "documentation" is unlawful, regardless of whether the defendant was authorized to use the computer in the first place. Oracle has pled those facts; Rimini never argues otherwise.

Inducing breach of contract. Rimini argues that it cannot be liable for inducing Oracle licensees to breach their contracts because Rimini supposedly acted as their agent. Rimini has the facts wrong. The FAC never alleges that Rimini acted as an agent of Oracle licensees when it engaged in unlawful copying; instead, the FAC alleges that Rimini "purported" to do so. Further, the FAC alleges specific unlawful acts by Rimini that took place outside any principal-agent relationship, which caused Oracle licensees to be in breach of their license agreements.

Interference with prospective economic advantage. Rimini merely claims that Oracle fails to plead an economic relationship with current and prospective support customers. Yet Oracle alleges that its software licensees typically contract for support as well, and that it has a large, successful software support business. Rimini *itself* alleges that Oracle has a dominant market share and substantial gross profit margins. Rimini cannot seriously argue that Oracle has failed to plead the required economic relationship or that Rimini lacks adequate notice of what that relationship is.

Unfair competition. Rimini argues that Oracle has not pled an unlawful act that would support a claim for "unlawful" business practices under California's Unfair Competition Law ("UCL"). In fact, Oracle has pled violations of the CFAA, California Penal Code Section 502 and Nevada Revised Statute Section 205.4765, tortious interference, inducing breach of contract, trespass to chattels, and unjust enrichment. Each of these is enough to support a UCL claim.

Trespass to chattels. The FAC states that Rimini's use of crawlers caused Oracle's websites to freeze, slow down, or become temporarily non-operational, disrupting their operation and impeding their availability to Oracle's customers. The very California Supreme Court case that Rimini cites holds that "unauthorized robotic data collection from a company's publicly available Web site" may constitute a trespass to chattels. Any impairment of the condition, quality, or value of the computer is enough to state a claim; any deprivation of use is sufficient if the loss caused thereby can be measured. Oracle has pled these facts.

Unjust enrichment. Rimini argues that unjust enrichment it is precluded when there is a contract between the parties – without acknowledging that Rimini denies the existence of any contract. Oracle can plead breach of contract and unjust enrichment in the alternative.

Unfair business practices. Oracle alleges that Rimini does not have the resources, and has not made the investment, necessary to offer the levels of support Rimini advertises. Instead, Rimini steals Oracle's support materials and uses them to sell support at less than its actual cost – as little as $100 per year. These allegations establish below-cost pricing.

Accounting. Rimini argues that an accounting is unavailable unless there is a relationship between the parties, but fails to recognize that the relationship may be contractual. Oracle has pled a contractual relationship between the parties, as Rimini concedes.

The motion to dismiss should be denied.

II. SUMMARY OF ALLEGATIONS

A. Oracle's Enterprise Software and Support Business

Oracle is the world's largest enterprise software company. It develops, manufactures, and distributes database, middleware, and applications software programs, including the PeopleSoft, J.D. Edwards, and Siebel families of software products to business customers. (FAC ¶¶ 5, 15, 25) Oracle earns revenue by licensing software to businesses and by providing support services, among other things. (*Id.* ¶ 33) Like other companies in the enterprise software industry, Oracle does not sell ownership rights to its software or related support products. (*Id.* ¶ 26) Instead, Oracle grants its customers limited rights to use specific Oracle software programs; Oracle retains all copyrights and other intellectual property rights. (*Id.*) As a result, no one may use, copy, or access Oracle's intellectual property, including software and related documentation, without Oracle's express written permission: an Oracle license agreement.

B. Oracle's Licensing Terms and Website Terms of Use

Oracle's license agreements narrowly limit access to Oracle's intellectual property and place restrictions on what licensees may do with those materials. The licenses define Oracle's confidential information to include, without limitation, Oracle's software, its object and source code, and any associated documentation or source offerings, and define "software" to include

update products made available to customers under Oracle's support contracts. (*Id.* ¶ 28.) They prohibit access to, reproduction, distribution, and use, of any portion of Oracle's software except what is expressly licensed and paid for by the licensee. (*Id.* ¶ 27.) The license agreements allow only access that is solely in support of the licensee's authorized use of the Oracle programs for which the licensee holds a supported license from Oracle. (*Id.* ¶ 29.) Any use of the software other than by the customer for production, back up, archival, or in-house disaster recovery purposes is prohibited. (*Id.* ¶ 28.)

The license agreements also place limits on what can be shared with third parties, and how. The licenses restrict where the customer may install the software, to whom it may provide copies, and the purposes for which it may make copies. (*Id.* ¶ 27.) Further, a licensee may not sublicense, disclose, use, rent, or lease the software to third parties. (*Id.*) Third parties cannot maintain Oracle software except as expressly permitted by the license agreements with Oracle's customers (*id.* ¶ 28), cannot install or use Oracle software on an offsite server, and cannot access the source code of the software (*id.*).

Licensed customers can, and typically do, purchase technical support services from Oracle, in addition to licensing the software applications themselves. (*Id.* ¶ 26.) As part of its support business, Oracle maintains password-protected Technical Support websites, such as MetaLink3, where Oracle customers with active support agreements and log-in credentials can access and download software applications and environments, program updates, bug fixes, patches, custom solutions, and instructional documents ("Software and Support Materials") relating to their licensed Oracle products. (*Id.* ¶¶ 5 n.1, 26, 29, 32, 39.)

Oracle has invested billions of dollars in research, development, and engineering to create the Software and Support Materials. (*Id.* ¶ 39.) As noted above, these materials are also Oracle's confidential information under the terms of the customers' license agreements, and are protected by copyrights owned by Oracle. (*Id.* ¶¶ 28, 61-62, 71-74.)

Given the size of Oracle's investment and its importance to Oracle's business, it is unsurprising that Oracle's Technical Support websites are password-protected and access is governed by written Terms of Use. (*Id.* ¶ 39.) Anyone who has used or accessed Oracle's

Technical Support websites has agreed to be bound by Oracle's Terms of Use. (*Id.* ¶ 32, 111.) The Terms of Use incorporate the terms and restrictions of Oracle's license agreements (*id.* ¶ 32) and further impose restrictions on access. For example, access to the websites is granted only to the customer's designated Oracle support contacts, and only for use in support of the customer's authorized use of Oracle programs for which the customer has a support license from Oracle. (*Id.* ¶ 29.)

Oracle restricts not only *who* can get access to the Technical Support websites, it also restricts *how* a person can get access. A user cannot access or use the website in any way that could damage, disable, overburden, impair, or otherwise result in unauthorized access to or interference with the proper functioning of any Oracle computer system or networks (*id.* ¶ 30) and cannot use software routines such as roots, spider, scrapers, or other automated means to access the websites (*id.* ¶ 31).

The Terms of Use further specify how the materials on the Technical Support websites can and cannot be used. The user of the website may not use, disclose, reproduce, or transmit, or otherwise copy the materials on the website for any purpose except to support the user's authorized use of Oracle programs for which the user has a support license from Oracle. (*Id.* ¶ 30.) In particular, the materials on the website cannot be used to provide services to third parties (*id.* ¶ 29) and a user who downloads materials from the websites cannot modify or alter them in any way (*id.* ¶ 32).

Customers have no right, contractual or otherwise, to download Software and Support Materials relating to software programs they have not licensed from Oracle, or for which the customers did not purchase support rights, or once the support rights they did purchase have expired. (*Id.* ¶ 39.)

C. Rimini's Support Business

Defendant Rimini Street seeks to compete with Oracle's support business by providing support services to customers who use Oracle software, including Oracle's J.D. Edwards ("JDE"), Siebel, and PeopleSoft families of applications. (*Id.* ¶¶ 33-34.) Rimini Street claims that it can provide fixes and updates for older versions of Oracle's software, along with

customization fixes, tax and regulator updates, applications and repository fixes, and "24/7 Support with Guaranteed 30 minutes or less Response" on Oracle's software programs – despite the fact that Rimini has no intellectual property rights to that software at all. (*Id.* ¶¶ 35-36.) Moreover, Rimini claims that it can provide this support at 50% of the price that Oracle charges for its support services. (*Id.*) Rimini has even offered to provide annual maintenance service for customers using PeopleSoft, JDE, or Siebel software for $100 per year for two years. (*Id.* ¶ 38.)

One Rimini customer aptly observed that "anything that sounds too good to be true probably is." (*Id.*) Rimini's claims about its support services *are* too good to be true. Rimini Street does not have the development capability to meet the support commitments it advertises at any price, much less the 50% discount it promotes. (*Id.* ¶ 37.) It certainly has not matched Oracle's investment in development resources, or even come close to it. (*Id.*) Instead, Rimini cheats.

D. Rimini's Field-Tested Unlawful Scheme

Rimini is the second illegal business of its CEO and President, Seth Ravin. Before starting Rimini, Ravin was the president of a company called TomorrowNow, Inc. TomorrowNow gained repeated unauthorized access to Oracle's intellectual property. It made and used thousands of copies of Oracle's copyrighted software applications and relied on illegal downloading from Oracle websites, using custom programmed "scraping" tools designed to "scrape" Oracle's website for bug fixes, patches, updates, and instruction manuals. (*Id.* ¶¶ 10, 49.) Ravin sold his stake in that business to SAP AG, which eventually admitted that Rimini had improperly copied Oracle Software and Support Materials. (*Id.* ¶ 11.) SAP shut down TomorrowNow in October 2008, having concluded that it could not provide support services without infringing Oracle's intellectual property rights. (*Id.*)

Like TomorrowNow's, Rimini's unlawful scheme has three basic steps. First, a Rimini employee – acting directly, or through an automated software routine, such as a crawler – obtains access to Oracle's Technical Support Websites using the log-in credential of an actual Oracle support licensee. (*Id.* ¶¶ 39-44.) Second, Rimini downloads Software and Support Materials that neither the licensee nor Rimini has any right to access, copy, or use. (*Id.*) Third, Rimini

uses these unlawfully obtained copies to offer low-cost support and induce Oracle's customers to cancel their support contracts in favor of Rimini. (*Id.* ¶¶ 37, 39-44.)

Rimini has repeatedly logged on to Oracle's Technical Support websites using the log-in credentials of Oracle's licensed support customers. (*Id.* ¶¶ 5, 39-46, 57.)[1] As discussed above, the rights of those customers to access the Technical Support websites are limited by Oracle's license agreements and Terms of Use. Customers have no right to use or download Software and Support Materials relating to software programs for which the customers do not have active support licenses. (*Id.* ¶ 39.)

Rimini is well aware of these restrictions. Of Rimini's ten-member management team, seven list prior employment experience with PeopleSoft, Siebel, or Oracle. (*Id.* ¶ 58.) In addition, other Rimini Street managers and employees claim to have years of experience providing support services for PeopleSoft software. (*Id.*) Seth Ravin, Rimini's CEO and President, has publicly admitted that

> It is very common for [a customer] to provide a password and ID for us to get to download upgrades and support. It's a standard industry practice across every consulting firm. *The key is you have to be authorized*. . . . You need to be very careful about parsing documents – whether you take 20 or hundreds. *Either you're authorized or you're not*."

(*Id.* ¶ 7) (emphasis added)

Rimini is *not* authorized – it repeatedly downloads thousands of files that the customer on whose behalf it purports to act has no right to copy or use, and does so for purposes that are not in furtherance of the customer's relationship with Oracle. (*Id.* ¶¶ 39-45, 57, 113) Rimini does so by retrieving individual files and by using the automated crawlers that are specifically prohibited by Oracle's Terms of Use. For example,

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[1] In its brief, Rimini falsely states that Oracle "admits" that Rimini used "valid, Oracle-supplied log-in credentials" and that "Oracle's allegations demonstrate that Oracle itself provided Rimini Street with direct access to its computers." Rimini Mot. at 3. Nothing in the FAC supports the inferences that Rimini seeks to draw in its own favor. The complaint never identifies any log-in credential as "valid," nor does the complaint ever allege that Rimini was ever authorized by any customer to actually use any log-in credential to download materials, nor does the complaint allege that Oracle "supplied" Rimini with log-in credentials.

- in November 2008, Rimini accessed the Oracle website and downloaded tens of thousands of documents relating to the PeopleSoft and JDE families of applications, even though the customer whose login credentials Rimini used had no license for any PeopleSoft or JDE software (*Id.* ¶ 43);

- between November 18 and 24, 2008, Rimini used an automated crawler to systematically search for and copy every conceivable numerical sequence in a range of 800,000 document titles, successfully copying about 120,000 of Oracle's proprietary documents (*Id.* ¶ 41);

- between December 10 and 28, 2008, a Rimini employee downloaded more than 100,000 files to servers associated with IP addresses owned by Rimini; thousands of these downloaded files were Software and Support Materials for which the supposed customer had no license (*Id.* ¶ 40);

- between April 20 and May 1, 2009, a Rimini employee downloaded several thousand files to servers associated with IP addresses owned by Rimini; thousands of these downloaded files were Software and Support Materials for which the supposed customer had no license (*Id.* ¶ 40); and

- Rimini President and CEO Seth Ravin personally logged into the Technical Support website, purportedly on behalf of a customer, and downloaded over 5,000 documents and 11,000 files associated with those documents, including many for which neither the customer nor Rimini had any license. (*Id.* ¶¶ 46, 53.)

All of these actions were unauthorized, as they were in violation of the express terms of Oracle's license agreements and Terms of Use – the only source of authorization available to a user of Oracle's intellectual property. (*Id.* ¶¶ 26, 39, 57)

Although the extent of Rimini's unauthorized access and copying is not known to Oracle, Rimini has directly admitted to Oracle that Rimini used crawlers and other automated means of mass downloading as the only feasible way for Rimini to "identify, download, and catalog such a large volume of Support Materials." (*Id.* ¶¶ 47- 48)[2] Moreover, the examples above were discovered because Rimini's involvement was betrayed by its IP address or by a log-in credential that specifically identified Rimini (e.g., "rimini_street") or a known Rimini employee (e.g., "Dennis Chiu"). (*Id.* ¶ 44) On other occasions, Oracle licensees who are also listed as customers on Rimini's website appear to have engaged in similar, unauthorized mass downloading of materials for which the customer has no license. Rimini Street either performed these downloads

[2] *See also* Rimini Counterclaim at ¶ 26 (admitting to use of crawlers).

with the customer's own credentials or induced the customer to do so. (*Id.* ¶ 44)

Having obtained Oracle's Software and Support Materials – without incurring Oracle's enormous costs of development – Rimini then uses those materials to advertise its services and retain the current and prospective customers of Oracle. (*Id.* ¶ 125) As a result, Rimini has succeeded in persuading some of these customers to contract with Rimini instead of Oracle for support. (*Id.* ¶¶ 124, 127-28)

Loss of customers is not the only way in which Rimini's conduct has caused injury to Oracle, however. In addition, Rimini's use of crawlers and other means of mass downloading have caused the databases that host the Software and Support Materials to freeze, disrupting their operation and impeding the availability of lawful downloads to Oracle's other customers. (*Id.* ¶¶ 6, 45) This impedes the functioning of Oracle's business, increases costs to Oracle of maintaining and repairing the servers, and disrupts Oracle's ability to provide service to its customers. (*Id.* ¶ 45) Rimini has expressly admitted to Oracle that Rimini's automated crawlers damaged Oracle's servers: in November 2008, Oracle blocked access to a Rimini Street IP address which had downloaded thousands of Software and Support Materials. A Rimini Street employee complained to Oracle about its response, but admitted that the mass downloading impaired the performance of Oracle's servers: "I understand our current methodology creates issues with the CPU utilization on Oracle's servers, and as such, you've had to block any access from our IP addresses." (*Id.* ¶ 47)

III. ARGUMENT

A. Applicable Standard

A complaint survives a motion to dismiss if, taking all well pleaded factual allegations as true, it contains enough facts to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, __ U.S. __, 129 S.Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

B. Oracle Has Stated a Claim for Violation of the Federal Computer Fraud and Abuse Act (Count 2)

Based on the facts summarized above, Oracle claims that Rimini has violated five distinct

provisions of the Federal Computer Fraud and Abuse Act (CFAA), 18 U.S.C. § 1030:

(1) intentionally accessing the Technical Support websites without authorization or exceeding authorized access and obtaining information from that website (18 U.S.C. § 1030 (a)(2)(C));

(2) knowingly, and with intent to defraud Oracle, accessing the Technical Support websites without authorization or exceeding authorized access, furthering the fraud and obtaining one or more things of value (18 U.S.C. § 1030 (a)(4));

(3) knowingly causing transmission of robots and crawlers to engage in massive downloading of Software and Support Materials from Oracle's Technical Support websites, and as a result intentionally causing damage to Oracle's computers without authorization (18 U.S.C. § 1030(a)(5)(A));

(4) intentionally accessing Oracle's Technical Support websites without authorization and recklessly causing damage (18 U.S.C. § 1030 (a)(5)(B)); and

(5) intentionally accessing Oracle's Technical Support websites without authorization and causing damage (18 U.S.C. § 1030(a)(5)(C)).

In response, Rimini focuses on a single element of the CFAA claim: that the access to the computer must be "without authorization" or "exceed authorized access," and argues that neither alternative has been satisfied. Rimini is mistaken.

Below, we explain the meaning of the terms "authorization" and "exceeds authorized access" under the CFAA and discuss the extensive case law – ignored by Rimini – that holds that contracts and website terms of use can determine what access is unauthorized or in excess of authorization. We then explain how Rimini's access to Oracle's websites was "without authorization." We further explain how, even assuming that Rimini had some right to access Oracle's computers, Rimini's conduct described in the FAC clearly exceeded authorized access. Finally, we explain how Rimini's argument about "access" offers no defense at all to its unauthorized use of web crawlers, which is an independent violation of the CFAA.

1. "Authorization" and "Exceeds Authorized Access" Under the CFAA

Under the CFAA, "authorization" is not defined, but the courts give it its ordinary, contemporary, common meaning, "permission or power granted by an authority." *LVRC Holdings LLC v. Brekka*, 581 F.3d 1127, 1132-33 (9th Cir. 2009) (citation omitted). Access to a computer is "without authorization" if the defendant "accesses a computer without any permission at all." *Id.* at 1133.

Congress did provide an express definition of the term "exceeds authorized access" – "to access a computer with authorization and to use such access to obtain or alter information in the computer that the accesser is not entitled so to obtain or alter." 18 U.S.C. § 1030 (e)(6). *See also LVRC*, 581 F.3d at 1133 (holding that "exceeds authorized access" means that a person "has permission to access the computer, but accesses information on the computer that the person is not entitled to access").

Consequently, the touchstone for liability under the CFAA is *permission* to access. In an effort to avoid the CFAA's emphasis on permission, Rimini tries to characterize the CFAA as merely "a federal statute intended to address computer hacking," and argues that it did not "hack" into Oracle's computers. Rimini Mot. at 3. But hacking is not the only way to violate the CFAA. Indeed, in *LVRC*, the Ninth Circuit expressly held that hacking *or access without permission* constitutes unauthorized access, specifying that a person accesses a computer "without authorization" if the person "has not received permission to use the computer for any purpose (such as when a hacker accesses someone's computer without any permission), or when the employer has rescinded permission to access the computer and the defendant uses the computer anyway." *LVRC*, 581 F.3d at 1135; *see also Theofel v. Farey-Jones*, 359 F.3d 1066 (9th Cir. 2004) (holding that defendants had accessed a computer "without authorization" for purposes of the Stored Communications Act, 18 U.S.C. § 2701 *et seq.*, when defendants procured access by fraud).

Permission may be granted, revoked, or forbidden in any number of ways, but one of the most obvious and common ways of regulating access to an internet website is by a contract contained in the website terms of use. Thus, in *eBay, Inc. v. Digital Point Solutions, Inc.*, 608 F. Supp. 2d 1156, 1164 (N.D. Cal. 2009), the court held that the plaintiff pled a CFAA claim by alleging violation of contractual terms, specifically, eBay's website terms of use, that specified what access was allowed and what was not: "Allegations with respect to access and use beyond those set forth in a user agreement constitute unauthorized use under the CFAA." *Id.* Numerous other federal courts have relied on contract provisions concerning access rights, including website terms of use, to decide whether access to a computer was without authorization or

exceeded authorized access. *See, e.g.*, *EF Cultural Travel BV v. Zefer Corp*., 318 F.3d 58, 62-63 (1st Cir. 2003) ("A lack of authorization could be established by an explicit statement on the website restricting access").[3]

Accordingly, Rimini's argument that "the CFAA does not address breach of contract," Rimini Mot. at 8, is simply wrong. The CFAA looks to contracts when the contracts specify what access is authorized.[4]

2. Rimini's Access Was "Without Authorization" or "Exceeded Authorized Access"

Applying these principles, the FAC alleges access of Oracle's Technical Support websites by Rimini without authorization. Although Rimini tries to spin the FAC to suggest that Oracle admits that Rimini had permission to access Oracle's website every time Rimini did so,

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[3] *See also, e.g.*, *Southwest Airlines Co. v. Farechase, Inc.*, 318 F. Supp. 2d 435, 439-40 (N.D. Tex. 2004) ("Use Agreement" posted on website stated that scrapers, robots, and similar programs were prohibited, so use of any such program by defendant was unauthorized access under CFAA); *America Online, Inc. v. Nat'l Health Care Disc., Inc.*, 174 F. Supp. 2d 890, 899 (N.D. Iowa 2001) (access that violated website terms of use exceeded authorized access under CFAA); *Register.com, Inc. v. Verio, Inc.*, 126 F. Supp. 2d 238, 247-51 (S.D.N.Y. 2000) (analyzing terms of use as one way to decide whether use of robots to access site was authorized under CFAA); *America Online, Inc. v. LCGM, Inc.*, 46 F. Supp. 2d 444, 450 (E.D. Va. 1998) (holding that CFAA claim was established where "[d]efendants' actions violated AOL's Terms of Service, and as such was unauthorized").

[4] The cases that Rimini cites do not support its assertions. *SalesTraq America, LLC v. Zyskowski*, 635 F. Supp. 2d 1178 (D. Nev. 2009), did not hold, as Rimini suggests, that there cannot be a CFAA claim based on a breach of contract. Rimini Mot. at 5. In *SalesTraq*, the defendants actually paid for a license to access plaintiff's website, but then copied licensed content from the website and used it for defendants' commercial use, in violation of the license agreement. *Id.* at 1183-84. This Court rejected the CFAA claim, holding that "[t]here is a crucial difference between misusing information properly accessed and exceeding one's authorized access to obtain restricted information." *Id.* at 1183. Rimini ignores that "crucial difference" by failing to recognize that breach of a contract term concerning access violates the CFAA, while breach of a term unrelated to access does not. Rimini's other citations suffer from similar defects. *See United States v. Drew*, 259 F.R.D. 449, 452-55, 459, 467 (C.D. Cal. 2009) (in misdemeanor criminal prosecution under CFAA, holding that void for vagueness doctrine prevented government from using breaches of MySpace website terms of service that forbade use of false names and harassing use of website to establish that access to site was unauthorized); *Int'l Ass'n of Machinists & Aerospace Workers v. Werner-Masuda*, 390 F. Supp. 2d 479, 498-99 (D. Md. 2005) (rejecting CFAA claim were defendant was authorized by contract to access all information at issue, but plaintiff claimed that the defendant *used* the information in a manner not permitted by the contract).

Rimini Mot. at 5-6, the FAC says no such thing.

The source of all authorization to access the Oracle websites is the license agreement, further limited by the Terms of Use. (FAC ¶¶ 26-32.) *See also eBay, Inc. v. Bidder's Edge, Inc.*, 100 F. Supp. 2d 1058, 1070 (N.D. Cal. 2000) ("eBay's servers are private property, conditional access to which eBay grants the public.") Rimini had no right to access any of Oracle's computers unless an actual Oracle licensee designated Rimini to act on its behalf, subject to the restrictions in the underlying license. (FAC ¶ 28.) Those restrictions forbid access to any portion of Oracle's software except what is expressly licensed and paid for by the licensee (*Id.* ¶¶ 27, 39). They permit access to the websites solely in support of the licensee's authorized use of the Oracle programs for which it holds a supported license from Oracle (*Id.* ¶ 29). They forbid the use of "crawlers" or "scrapers." (*Id.* ¶ 31). Oracle's licensees had no power to authorize Rimini's access to the website on terms that were forbidden by Oracle. *Cf. Snap-On Business Solutions, Inc. v. O'Neil & Assocs., Inc.*, __ F. Supp. 2d ___, No. 5:09-CV-1547, 2010 WL 1539958, *6-7 (N.D. Ohio Apr. 16, 2010).

Thus, on the "many occasions" that Rimini "downloaded documents in a particular software family while purporting to act on behalf of customers who had no license to any application for any product in that family" (FAC ¶¶ 5, 40, 43, 46, 57, 59, 113), Rimini accessed Oracle's computers "without any permission at all." *LVRC*, 531 F.3d at 1132-33. Likewise, when Rimini logged onto Oracle's website with a customer's credentials for the purpose of stealing those materials and using them to lure other customers away from Oracle (FAC ¶¶ 9, 113), Rimini accessed Oracle's computers "without any permission at all." When Rimini used automated mechanisms, such as robots or crawlers, to perform downloads from the Technical Support website (*Id.* ¶¶ 6, 31, 41, 57, 59, 113), Rimini accessed the computers Oracle's computers "without any permission at all."

The FAC also establishes access that exceeds authorization, which provides an independent basis to deny Rimini's motion. Assuming, for sake of argument, that on some of the occasions of illegal copying, Rimini had permission to access Oracle's computers, the FAC plainly alleges that Rimini accessed information on Oracle's computers that Rimini was not

entitled to access. (*Id.* ¶¶ 40-46). That is the very definition of "exceeds authorized access." *See* 18 U.S.C. § 1030 (e)(6); *LVRC*, 581 F.3d at 1133.

Indeed, Rimini offers no argument whatsoever that its conduct complied with Oracle's license agreements and Terms of Use; Rimini even concedes that Oracle has pled a breach of those agreements. Instead, Rimini merely argues that the CFAA does not address breach of contract. Rimini Mot. at 3. For the reasons stated above, that argument is wrong. The motion to dismiss the CFAA claim should be denied.

3. Oracle Need Not Show Unauthorized Access Under 18 U.S.C. Section 1030(a)(5)(A)

Finally, Oracle has also pled a violation of 18 U.S.C. § 1030 (a)(5)(A) based on Rimini's use of crawlers. That subsection prohibits knowingly causing "the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization, to a protected computer." Unlike the other prongs of section 1030, 1030(a)(5)(A) does not depend on "access" at all. Rather, Oracle need only show a transmission that damaged its computers without authorization. Rimini does not dispute the allegations that Rimini's crawlers damaged Oracle's servers. (FAC ¶ 45.) And the use of crawlers is always forbidden (FAC ¶ 31), and thus never authorized. Rimini makes no argument at all that its use of crawlers was authorized; indeed, Rimini has made no argument at all applicable to Oracle's claim under section 1030(a)(5)(A). Consequently, Rimini's motion as to Count 2 fails for this reason as well.

C. Oracle Has Stated a Claim for Under California Penal Code Section 502 and Nevada Revised Statute Section 205.4765 (Counts 3, 4)

Oracle also pleads violations of Nevada and California counterparts to the CFAA (Counts 3 and 4), and Rimini's motion to dismiss these claims merely repeats, in truncated fashion, the same erroneous challenges to Oracle's CFAA claim.

Once again, Rimini tries to argue that California Penal Code Section 502 and Nevada Revised Statute Section 205.4765 are merely "hacking" statutes. Again, Rimini ignores the fact that neither the Nevada law nor the California law is so limited. Both impose liability where the defendant obtains access "without permission," Cal. Penal Code § 502, or "without

authorization," Nev. Rev. Stat. § 205.4765. Indeed, the preamble to California Penal Code Section 502 emphasizes that the legislature sought to protect commercial computer systems from "unauthorized access," with access defined broadly to mean "to gain entry to, instruct, or communicate with the logical, arithmetical, or memory function resources of a computer, computer system, or computer network." Cal. Penal Code § 502(a), (b)(1).

Similarly, Rimini again incorrectly asserts that Oracle gave Rimini permission to access its computers on the occasions that Rimini unlawfully copied Oracle's Software and Support Materials. As noted above, this is not true, as Rimini's access was a direct breach of the license agreements and Terms of Use. In addition to that error, Rimini wholly ignores the actual language of California Penal Code Section 502(c)(2) and Nevada Revised Statute Section 205.4765. The CFAA prohibits unauthorized access to a "protected computer," and Rimini argues (incorrectly) that it was authorized to access Oracle's computers. Under section 502(c)(2), in contrast, a person breaks the law if he or she

> Knowingly accesses and without permission takes, copies, or makes use of ***any data from*** a computer, computer system, or computer network, or takes or copies ***any supporting documentation***, whether existing or residing internal or external to a computer, computer system, or computer network.

Cal. Penal Code § 502(c)(2) (emphasis added). Under section 502, it is irrelevant whether Rimini had permission to access Oracle's *computers* on any given occasion; all that matters is that Rimini accessed and took, copied, or used "any data" or "any supporting documentation" from any Oracle computer, system, or network. (Nevada law is substantially the same.)[5] There is no serious dispute that the FAC alleges that Rimini engaged in precisely that conduct. (FAC ¶¶ 39-45.)

D. Oracle Has Stated a Claim for Inducing Breach of Contract (Count 6)

Rimini next argues that Oracle has failed to state a claim for inducing breach of contract

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[5] Nevada Revised Statute Section 205.4765(1) has a similar construction to California Penal Code Section 502, forbidding any unauthorized access, taking, copying, or use, of "data, program, or any supporting documents" in a computer or computer system.

(Count 6). Rimini argues that the FAC alleges only that Rimini, acting as an agent of Oracle's customers, performed acts that caused those customers to breach their contracts. Rimini Mot. at 7-8. Rimini contends that this claim must fail because agents cannot induce their principals to breach contracts. Rimini misapprehends the FAC and thus misapplies the law.

First, the FAC never alleges that Rimini is acting on behalf of the clients whose credentials it uses. Rather, the FAC alleges that Rimini "purports" to act on behalf of customers, or "ostensibly" acts on their behalf, by logging onto the Oracle website using customer credentials. (FAC ¶¶ 40, 43, 46) There is no allegation in the FAC that Rimini's customers authorized Rimini to engage in unlawful access and copying as their agent, or even that Rimini disclosed to its customers the extent of its scheme.

Second, the FAC alleges that Rimini uses the stolen Software and Support Materials to create copies and derivative works that Rimini uses in its own support business, and to provide low-cost support to induce existing Oracle support licensees to become Rimini customers. (*Id.* ¶ 9) Rimini is not acting as an "agent" for its customers when it sells them repackaged, stolen Oracle intellectual property. Because all of its customers are still Oracle licensees, however, the customers remain subject to contractual provisions prohibiting them from copying or using any Oracle software that they have not licensed and paid for. (*Id.* ¶ 27) Rimini's conduct thus causes software licensees to be in breach of their agreements with Oracle.

Third, the FAC alleges efforts by Rimini to induce breach that occurred *before* Rimini became an agent of the relevant Oracle customer. For example, Rimini induced Oracle licensees to enter into support contracts with Rimini, in which Rimini committed to research, develop, and test updates and fixes to Oracle's PeopleSoft products at Rimini Street's business location, using Rimini Street's computer system hardware and software. As Rimini and Mr. Ravin knew, this was a violation of the PeopleSoft license agreements, which required that all such software be maintained at the licensee's site. (*Id.* ¶ 54) In each of these ways, Rimini induced breaches of contract by persons who were not Rimini's principals.

Consequently, Rimini's reliance on the rule that "corporate agents and employees acting for and on behalf of a corporation cannot be held liable for inducing a breach of the corporation's

contract," *Mintz v. Blue Cross of California*, 172 Cal.App.4th 1594, 1604 (Cal. Ct. App. 2009) (citation omitted), is misplaced – Rimini was not a corporate agent "acting for and on behalf of" Rimini's clients at the time that it engaged in the unlawful conduct.

E. Oracle Has Stated a Claim for Intentional and Negligent Interference With Prospective Economic Advantage (Counts 7, 8)

Oracle establishes intentional interference with prospective economic advantage by showing:

> (1) an economic relationship between plaintiff and a third party, with the probability of future economic benefit to the plaintiff;
>
> (2) defendant's knowledge of the relationship;
>
> (3) an intentional act by the defendant, designed to disrupt the relationship;
>
> (4) actual disruption of the relationship; and
>
> (5) economic harm to the plaintiff proximately caused by the defendant's wrongful act, including an intentional act by the defendant that is designed to disrupt the relationship between the plaintiff and a third party.

Edwards v. Arthur Andersen LLP, 44 Cal. 4th 937, 944 (2008); *see also Las Vegas-Tonopah-Reno Stage Line, Inc. v. Gray Line Tours of S. Nevada*, 106 Nev. 283, 287 (Nev. 1990). The elements of negligent interference are similar, except that Oracle need show only that Ravin and Rimini acted negligently, not intentionally. *See Venhaus v. Shultz*, 155 Cal. App. 4th 1072, 1078 (Cal. Ct. App. 2007) (listing elements of negligent interference).

Rimini's only argument on these claims is that Oracle fails to adequately plead the existence of Oracle's economic relationship with current and prospective customers. Rimini Mot. at 9. To the contrary, Oracle alleges – and Rimini admits – that Oracle is the "world's largest enterprise software company," and that it earns revenues by licensing software applications and providing support services to customers. (FAC ¶¶ 25-26; Rimini Counterclaim ¶ 9, 11) Oracle further alleges that Rimini has improperly disrupted these customer relationships by offering current and prospective customers Oracle's own proprietary information, stolen from Oracle, at 50% of Oracle's prices (or even $100 per year) in order to induce those customers to contract with Rimini instead of with Oracle. (FAC ¶¶ 9, 36-38, 127) Furthermore, Rimini's Answer and Counterclaims *admit* the existence of Oracle's economic relationships when Rimini

complains of Oracle's remarkable business success and the profitability of Oracle's support services – such as Rimini's allegation that Oracle has a "dominant 95% market share" and substantial gross profit margins on the after-market support of its products, and its allegations that Rimini is Oracle's "fastest-growing competitor" and that "[h]undreds" of organizations have "already made the switch to Rimini." (Rimini Counterclaim ¶¶ 7, 10) There is no serious question that Oracle's claim that it has economic relationships with current and prospective customers, and that Rimini has disrupted those relationships, is plausible. *See Transcription Comms. Corp. v. John Muir Health*, No. C. 08-4418 (TEH), 2009 WL 666943, at *10-11 (N.D. Cal. Mar. 13, 2009) (holding that plaintiff claiming tortious interference with prospective economic advantage satisfied pleading standards of *Twombly* by alleging that plaintiff had a single terminable-at-will contract with one customer, which was interfered with by defendant).[6]

F. Oracle Has Stated a Claim for Unfair Competition (Count 9)

California's unfair competition law, Cal. Bus. & Prof. Code § 17200 outlaws "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising." Cal. Bus. & Prof. Code § 17200. "An unlawful business practice under the UCL is anything that can properly be called a business practice and that at the same time is forbidden by law." *Morgan v. AT & T Wireless Servs., Inc.*, 177 Cal. App. 4th 1235, 1254 (Cal. Ct. App. 2009).

Rimini argues that Oracle has failed to plead any unlawful act. Rimini Mot. at 10. While Rimini focuses on the allegation of RICO violations, Rimini ignores the other allegations of the

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[6] The two unpublished district court decision that Rimini cites in support of this argument do not help it. In *Kema, Inc. v. Koperwhats*, No. C-09-1587 MMC, 2010 WL 726640, at *8 (N.D. Cal. Mar. 1, 2010), the court held that the counterclaim plaintiff had failed to identify any prospective business relationship other than a "generic assertion that 'current and prospective customers' were 'dissuaded' from purchasing or licensing Koperwhats' software." In contrast, here Oracle has alleged detailed facts about its support business, its success, its contractual relationships with customers, and its licensing practices. *RSI Corp. v. Int'l Business Machines Corp.*, No. C-08-3414 RMW (RS), 2010 WL 726032 (N.D. Cal. Feb. 26, 2010) was decided under *New York* law, which, the court observed, imposes an unusually heightened pleading standard on tortious interference claims. *See id.* at *4.

FAC. As discussed above, Oracle alleges that Rimini has violated the CFAA as well as its California and Nevada analog, and violations of these statutes – as Rimini does not dispute – are each independently sufficient to support a UCL unlawful claim. Moreover, Oracle has also shown it has stated claims for tortious interference, inducing breach of contract, trespass to chattels, and unjust enrichment, each of which is also sufficient to support a UCL claim. *See, e.g., Paulus v. Bob Lynch Ford, Inc.*, 139 Cal. App. 4th 659, 681 (2006) (noting that common-law violations "can serve as [a] predicate for a [UCL] 'unlawful' violation") (quoting Stern, Bus. & Prof. Code, § 17200 Practice (The Rutter Group 2006) ¶ 3:56, p. 3-13).

G. Oracle Has Stated a Claim for Trespass to Chattels (Count 10)

Oracle alleges that Rimini committed the tort of trespass to chattels by accessing Oracle's computer systems without permission, including by using automated programs, such as crawlers and scrapers, to access Oracle's websites without permission and systematically download thousands of documents. That conduct by Rimini caused Oracle's computers to freeze, slow down, or become temporarily non-operational. (FAC ¶¶ 6, 41, 45, 47, 57, 59, 156, 157, 159) A Rimini employee admitted to Oracle that Rimini's use of crawlers impaired Oracle's computers, writing: "I understand our current methodology creates issues with the CPU utilization on Oracle's servers, and as such, you've had to block any access from our IP addresses." (*Id.* ¶ 47)

Rimini moves to dismiss the claim for trespass to chattels, making two arguments. First, Rimini claims that the FAC fails to give it notice of the specific conduct that constitutes trespass to chattels. As noted immediately above, those facts are set forth clearly in the FAC.

Rimini then argues that the trespass to chattels claim fails because, according to Rimini, Oracle has not alleged "physical harm to the chattel or deprivation of the use of the chattel for a substantial time." Rimini Mot. at 11. But that is *not* what the law requires – as is established by the block quote in Rimini's *own brief* immediately following this assertion. Under California law, electronic intermeddling with a computer is actionable "only if 'the chattel is impaired as to its condition, quality, or value, or . . . the possessor is deprived of the use of the chattel for a substantial time.'" *Intel Corp. v. Hamidi*, 30 Cal. 4th 1342, 1357 (2003) (quoting Restatement (Second) Torts, § 218 (alteration in original)). The period of deprivation is "substantial" if "it is

possible to estimate the loss caused thereby." *Id.*

Thus, as *Intel* expressly recognizes, impairment of the condition, quality, or value of Oracle's computers constitutes trespass to chattels, as does deprivation that lasts long enough to cause a measurable injury. Oracle has pled such impairment and deprivation by alleging that Rimini's crawlers caused Oracle's computers to freeze, slow down, or become temporarily non-operational, which impeded the functioning of Oracle's business, increased costs to Oracle of maintaining and repairing the servers, and disrupted Oracle's ability to provide service to its customers. (FAC ¶ 45) Indeed, as the California Supreme Court noted with approval in *Intel*, courts have recognized that "unauthorized robotic data collection from a company's publicly available Web site" may constitute a trespass to chattels. *Intel*, 30 Cal. 4th at 1354-55 (citing cases with approval); *see also eBay*, 100 F. Supp. 2d at 1066, 1071-72 (on trespass to chattels theory, enjoining defendant's use of crawlers on eBay's website based on risk that continued use by defendant and others would cause "reduced system performance, system unavailability, or data loss").

H. Oracle Has Stated a Claim for Unjust Enrichment (Count 11)

Under California law, "the elements for a claim of unjust enrichment [are]: receipt of a benefit and unjust retention of the benefit at the expense of another." *Lectrodryer v. Seoulbank*, 77 Cal. App. 4th 723, 726 (Cal. Ct. App. 2000); *see also Oracle Corp. v. SAP AG*, No. C 07-1658 PJH, 2008 WL 5234260, at *8-9 (N.D. Cal. Dec. 15, 2008) (holding, on near-identical factual allegations, that Oracle had pled a claim for unjust enrichment under California law). Other courts also recognize the claim. *See also Unionamerica Mortgage and Equity Trust v. McDonald*, 97 Nev. 210, 212 (Nev. 1981).

Rimini argues that the FAC has only conclusory allegations of unjust enrichment. To the contrary, the FAC sets out detailed allegations that, rather than develop intellectual property of its own, Rimini misappropriated the Software and Support Materials that Oracle developed at substantial expense, and then used that wrongfully acquired advantage to attract Oracle's support customers. No more is required, and the sole case that Rimini cites, *Rosal v. First Federal Bank*, does not suggest otherwise. In *Rosal*, the plaintiff sued after defendant began foreclosure

proceedings, claiming that defendant failed to make certain statutorily required disclosures. The unjust enrichment claim consisted of nothing more than an allegation that "[d]efendants received and continue to receive benefits of profits and material gains by unjustly retaining profits, income and ill-gotten gains at the expense of the Plaintiff who acted in detrimental reliance upon the defendants' false assurances, representations and promises." 671 F. Supp. 2d 1111, 1133 (N.D. Cal. 2009).

Rimini next argues that Oracle's unjust enrichment claim is "untenable" because an unjust enrichment claim is inconsistent with a contract claim. The district court in Oracle's lawsuit against SAP considered and rejected this precise argument:

> A defendant is not entitled to have a cause of action dismissed for failure to state a claim simply because it conflicts with another cause of action. Thus, to the extent that plaintiffs are ultimately able to prevail under a breach of contract theory or a tort theory, they will be precluded from also recovering under a claim of unjust enrichment. However, for pleading purposes, plaintiffs are entitled to plead inconsistent causes of action.

Oracle Corp. v. SAP AG, 2008 WL 5234260 at *9. Although Rimini does not dispute that Oracle has pled a claim for breach of contract, it has not admitted that Oracle will prevail on a contract theory, or that there is even a contract between the parties. *See* Rimini Answer to FAC ¶¶ 110-14 (denying all allegations under breach of contract count). None of the cases that Rimini cites indicate that the defendant disputed the existence of the contract. At the pleading stage, with its contract claims still disputed, Oracle is not required to abandon alternate theories of liability.

I. Oracle Has Stated a Claim for Unfair Business Practices (Count 12)

The Unfair Practices Act, Cal. Bus. & Prof. Code § 17044, provides: "It is unlawful for any person engaged in business within this State to sell or use any article or product as a 'loss leader' as defined in Section 17030 of this chapter." Section 17030 defines "loss leader" as

> any article or product sold at less than cost: (a) Where the purpose is to induce, promote or encourage the purchase of other merchandise; or (b) Where the effect is a tendency or capacity to mislead or deceive purchasers or prospective purchasers; or (c) Where the effect is to divert trade from or otherwise injure competitors.

The conduct at issue in Count 12 includes, but is not limited to, Rimini's sales of

software support at cut-rate prices – such as support for $100 per year – that were possible only because it acquired Oracle support materials unlawfully. FAC ¶¶ 9, 33-38, 164. Through its cut-rate pricing, made possible by its illegal business model, Rimini was able to lure customers away from Oracle. FAC ¶¶ 34-37.

Rimini argues that Count 12 fails because Oracle has not alleged violations of the Unfair Practices Act with sufficient specificity, yet acknowledges that Oracle alleges that Rimini has violated this section by "[s]elling articles or products at less than the cost." Rimini Mot. at 13 (quoting FAC ¶ 164). The FAC further alleges specific facts in support of this claim, including that Rimini sells support at 50% of Oracle's prices, that Rimini offers two years of support at only $100 per year, that Oracle – which has the advantage of expertise in having developed the software applications in the first place – has spent billions of dollars to develop the Software and Support Materials necessary for its support business. These allegations are sufficient to support a plausible claim that Rimini is selling support for less than what it costs to develop them.

J. Oracle Has Stated a Claim for an Accounting (Count 13)

"A cause of action for an accounting requires a showing that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting. An action for accounting is not available where the plaintiff alleges the right to recover a sum certain or a sum that can be made certain by calculation." *Teselle v. McLoughlin*, 173 Cal. App. 4th 156, 179 (Cal. Ct. App. 2009) (citation omitted). *See also Mikohn Gaming v. Acres Gaming, Inc.*, No. CV-S-97-1383 (EJW), 2001 WL 34778689, at *19 (D. Nev. Aug. 2, 2001).

Citing *Teselle*, Rimini argues that "Oracle cannot allege any relationship between Oracle and Rimini Street that requires an accounting, and its claim fails for this reason alone." Rimini Mot. at 18. Once again, Rimini's argument is foreclosed by the very case that it cites. The court in *Teselle* held that

> A fiduciary relationship between the parties is not required to state a cause of action for accounting. *All that is required is that some relationship exists that requires an accounting.* The right to an accounting can arise from the possession by the defendant of money or property which, because of the defendant's relationship with the plaintiff, the defendant is obliged to surrender.

Teselle, 173 Cal. App. 4th at 179 (emphasis added) (citation omitted). A contractual relationship between the parties – like the one that Rimini concedes Oracle has sufficiently pled – provides a basis for seeking an accounting. *See, e.g., People's Fin. & Thrift Co. of Visalia v. Bowman*, 58 Cal. App. 2d 729, 731-32 (Cal. Ct. App. 1943) (holding that a claim for an accounting seeks a "detailed statement of the mutual demands in the nature of debt and credit between parties, *arising out of contracts* or some fiduciary relation") (emphasis added).

Finally, Rimini argues that an accounting is not necessary in this case, apparently arguing that the amounts that it owes to Oracle are susceptible to calculation as a sum certain. But the nature and extraordinary scope of Rimini's misappropriation of Oracle's proprietary information, combined with Rimini's use of that information to create derivative works that further infringe on Oracle's rights, make it likely that the amounts that Rimini owes to Oracle, as a result of its unlawful possession of Oracle's property, cannot be ascertained without the benefit of an accounting. Consequently, Oracle's claim for an accounting is proper, and the motion to dismiss Count 13 should be denied.

CONCLUSION

For the foregoing reasons, Rimini's motion to dismiss should be denied. In the event that the Court grants Rimini's motion as to any cause of action, Oracle respectfully requests an opportunity to amend.

DATED: March 24, 2010

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Oracle International Corp.

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of May, 2010, I electronically transmitted the foregoing **PLAINTIFF ORACLE AMERICA INC., ORACLE USA, INC. AND ORACLE INTERNATIONAL CORP.'S OPPOSITION TO DEFENDANT RIMINI STREET, INC.'S MOTION TO DISMISS THE FIRST AMENDED COMPLAINT** to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

/s/ Christina Seki
An employee of Boies, Schiller & Flexner LLP